

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E

SCI 2009 10699

BETWEEN:

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED
(ACN 066 601 250) and WESTPAC BANKING CORPORATION
(ACN 007 457 141)

Plaintiff

and

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) & ORS (according to the attached Schedule)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 3 March 2010
Filed on behalf of: the Second, Third and Fourth Defendants

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: []

(Leon Zwier lwier@abl.com.au/
Lucy Kirwan lkirwan@abl.com.au)

This is the exhibit marked '**MAK-38**' now produced and shown to MARK ANTHONY
KORDA at the time of swearing this affidavit on 3 March 2010.

Before me:

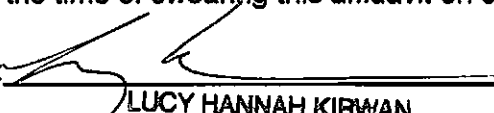

LUCY HANNAH KIRWAN
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit 'MAK-38'

**Copy of Limited Deed
of Guarantee**



Deacons

TIMBERCORP

Dated *26 September 2006*

672442/3

Limited Deed of Guarantee and Indemnity

Parties

Timbercorp Limited
ABN 87 055 185 087

Australia and New Zealand Banking Group Limited
ABN 11 005 357 522

Contact

Gillad Dalal
Partner
RACV Tower, 485 Bourke Street, Melbourne VIC 3000
Telephone: +61 (0)3 8688 6368
Email: gillad.dalal@deacons.com.au
Website: www.deacons.com.au
Our ref: 256353

Contents

1.	Definitions and Interpretation	1
2.	Guarantee	3
3.	Indemnity.....	4
4.	Release	4
5.	Rights of Beneficiary.....	6
6.	Restriction on rights of Guarantor	10
7.	Representations and warranties	11
8.	Payments	12
9.	Expenses, costs and Taxes.....	13
10.	Interest on overdue amounts	15
11.	Indemnities	16
12.	Assignment.....	16
13.	Set-off.....	17
14.	Preservation of rights.....	18
15.	Notices	21
16.	General provisions.....	22
17.	Governing law and jurisdiction.....	23
18.	Deed of Covenant.....	23

Deed dated *26 September 2006*

Parties **Timbercorp Limited** ABN 87 055 185 067
of Level 8, 461 Bourke Street, Melbourne, Victoria 3000
(the Guarantor)

Australia and New Zealand Banking Group Limited ABN 11
005 357 522
of Level 10, 530 Collins Street, Melbourne, Victoria 3000
(the Beneficiary)

It is agreed

1. Definitions and Interpretation

1.1 Definitions

Terms defined in the Facility Agreement and used herein will have the meaning ascribed to those terms in the Facility Agreement mutatis mutandis. Also, in this Deed, unless the context requires another meaning:

Debtor means Almond Land Pty Ltd (ABN 65 091 460 392).

Facility Agreement means the Facility Agreement between Almond Land Pty Ltd and the Lender dated on or about the date of this Deed.

Guaranteed Liabilities means all money, obligations and liabilities of any kind that are now or may in the future become due, owing or payable, whether actually, contingently or prospectively, by a Debtor to or for the account of the Lender under or in relation to a Transaction Document including on account of principal, interest, fees, expenses, indemnity payments, losses or damages and irrespective of:

- (1) the capacity of the Debtor or the Lender (whether as principal, agent, trustee, Beneficiary, partner or otherwise);
- (2) whether the Debtor is liable as principal debtor or as surety;
- (3) whether the Debtor is liable alone, jointly or jointly and severally with another person;

- (4) whether or not the money, obligation or liability is owed to the Lender or to its account as a result of an assignment, transfer or other dealing with or without the Guarantor's consent; or
- (5) whether the money, obligation or liability is owed or secured before or after the date of this Deed or any assignment of this Deed or any other Transaction Document.

Guarantee Event means an event described in Clause 2.4.

Transaction Document means:

- (1) this Deed;
- (2) the Facility Agreement;
- (3) each Security;
- (4) each document which the Bank and the Guarantor agree in writing is a "Transaction Document" for the purposes of this Deed including each document defined to be a "Finance Document" in the Facility Agreement; and
- (5) each document entered into or provided under any of the documents described in paragraphs (1) to (5) or for the purpose of amending or novating any of those documents,

and **Transaction Document** means any of them and, when used in relation to the Guarantor, means any of those documents to which the Guarantor or is a party.

1.2 Interpretation

Clause 1.2 of the Facility Agreement is incorporated into this Deed as if references to "Agreement" were references to this Deed.

1.3 Protection of Lender

Each party to this Deed acknowledges and agrees that this Deed protects the interests of the Lender.

1.4 Guarantor

- (1) A reference to the Guarantor is a reference to all of the persons named as the Guarantor together and each of them separately.
- (2) As against any one Guarantor, a reference to any Security Provider or to any Security includes a reference to the other Guarantors and to this Deed to the extent it affects them respectively.

(3) This Deed binds each of the persons who execute this Deed as a Guarantor even if:

- (a) any one or more of the other persons named as a Guarantor do not execute this Deed; or
- (b) execution by one or more of those other persons is or becomes void, voidable, illegal or unenforceable.

2. Guarantee

2.1 Consideration

The Guarantor enters into this Deed for valuable consideration received from the Beneficiary including the Beneficiary's agreement to enter into the Transaction Documents at the request of the Guarantor.

2.2 Guarantee

The Guarantor Irrevocably guarantees to the Beneficiary the payment and satisfaction by the Debtors of the Guaranteed Liabilities.

2.3 Beneficiary's right to demand

- (1) Whilst a Guarantee Event is subsisting, the Guarantor must immediately on demand by the Beneficiary pay or satisfy the Guaranteed Liabilities to or at the direction of the Beneficiary.
- (2) A demand under clause 2.3(1) may be made at any time and from time to time, and whether or not a demand has been made on the Debtor.

2.4 Guarantee Event

It is a Guarantee Event if:

- (1) the Debtor does not comply with any of the provisions of Clause 12.4 of the Facility Agreement, and either the Debtor or Guarantor has not, within 14 days of the Lender notifying the Guarantor of a breach of Clause 12.4 by the Debtor, remedied the breach in one of the following ways (the choice of which shall be at the absolute discretion of the Lender):
 - (a) repayment of sufficient moneys under the Facility Agreement to ensure that the Debtor is no longer in breach of Clause 12.4 of the Facility Agreement; or
 - (b) provision of Additional Security by the Guarantor which ensures that the Debtor is no longer in breach of Clause 12.4 of the Facility Agreement; or

- (2) any of the Projects are terminated.

3. Indemnity

3.1 Indemnity

If the obligation to pay or perform any Guaranteed Liabilities is not fully enforceable against, or any Guaranteed Liabilities are not fully recoverable from the Guarantor as surety, for any reason, including:

- (1) an Insolvency Event occurring in respect of the Debtor;
- (2) any legal limitation, disability, lack of capacity, power or authority affecting any person or an improper exercise of power or authority by any person; or
- (3) any provision of any Transaction Document, or any transaction relating to the Guaranteed Liabilities, being or becoming void, voidable, unenforceable or time barred,

as a separate and independent primary obligation, the Guarantor unconditionally and irrevocably indemnifies the Beneficiary against any Claim suffered or incurred or payable by the Beneficiary as a result and the Guaranteed Liabilities are recoverable from, or enforceable against, the Guarantor as though they had been incurred and owing by the Guarantor and the Guarantor was the sole and principal debtor in respect of the Guaranteed Liabilities.

3.2 Indemnity remains in effect

The indemnity in clause 3.1 remains in effect even if the guarantee under clause 2.2 is not or ceases to be valid or enforceable against the Guarantor for any reason.

3.3 Beneficiary's right to demand

The Guarantor must immediately on demand by the Beneficiary pay or satisfy to or at the direction of the Beneficiary any amount or obligation payable or due under clause 3.1.

4. Release

4.1 Release of Deed

If the Beneficiary is reasonably satisfied that:

- (1) all of the Guaranteed Liabilities are paid, discharged or performed in full;

(2) no money, obligation or liability is likely to become a Guaranteed Liability within a reasonable time; and

(3) there is no reasonable possibility that:

(a) any money received or recovered by the Beneficiary and applied in payment of the Guaranteed Liabilities; or

(b) any settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the Guaranteed Liabilities,

must be repaid or may be avoided under any law, including a law relating to preferences, bankruptcy, insolvency or the winding up of companies,

the Beneficiary will release the Guarantor from its obligations under this Deed, at the request and the cost of the Guarantor.

4.2 Reinstatement of Guarantor's obligations

(1) If:

(a) any payment, settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the Guaranteed Liabilities is void or voidable under any law; or

(b) any claim is made that any payment, settlement, conveyance, transfer or other transaction made in satisfaction of or in connection with the Guaranteed Liabilities is void or voidable under any law and the claim is upheld, conceded or compromised,

the Beneficiary is immediately entitled to the same rights, powers and remedies against the Guarantor as it would have had if the relevant payment, settlement, conveyance, transfer or transaction had never been made or taken place. If required by the Beneficiary, the Guarantor must, at its own expense, sign all documents and do all acts necessary to restore to the Beneficiary this Deed and any other Security to which the Guarantor was a party and held by the Beneficiary immediately before the payment, settlement, conveyance, transfer or transaction.

(2) The Beneficiary may retain this Deed until it is reasonably satisfied that no payment, settlement, conveyance, transfer or other transaction is affected in any manner referred to in clause 4.2(1) and that no claim referred to in clause 4.2(1) may be made.

(3) This clause 4.2 survives the discharge of this Deed.

4.3 Continuing obligations

- (1)** This Deed is a continuing guarantee and indemnity in favour of the Beneficiary until all of the Guaranteed Liabilities are paid, discharged or performed in full.
- (2)** This Deed remains in full force and effect until a final discharge is given to the Guarantor, despite any intermediate discharge or payment of or on account of any of the Guaranteed Liabilities or any settlement of account between the Beneficiary and the Debtor or any Security Provider or any other matter or thing.
- (3)** The obligations of the Guarantor under this Deed extend to any increase in the Guaranteed Liabilities as a result of any amendment of, supplement to or replacement of any Transaction Document or any other act, matter or thing, whether or not the Guarantor gave its consent to or had knowledge of the relevant act, matter or thing.

5. Rights of Beneficiary

5.1 Obligations of Guarantor unaffected

The obligations of the Guarantor under this Deed are absolute and unconditional and are not discharged, reduced or affected in any other way by any act, matter or thing that the Beneficiary, the Debtor, the Guarantor or any other person may do or omit to do and which would or might otherwise affect those obligations.

5.2 Preservation of obligations

Without limiting clause 5.1, the Guarantor's obligations are not discharged, reduced or if affected in any other way by any one or more of the following:

- (1)** a release, forbearance to sue, discharge, relinquishment, compounding or compromising of the obligations of the Debtor, the Guarantor or another person under a Transaction Document or in respect of the Guaranteed Liabilities;
- (2)** an amendment of, supplement to or replacement of the obligations of the Debtor, the Guarantor or another person under a Transaction Document or in respect of the Guaranteed Liabilities including any amendment, supplement or replacement under which the Debtor's obligations are increased, the Debtor incurs additional obligations or the time and method of payment by the Debtor is varied;

- (3) an obligation of the Debtor, the Guarantor or another person under a Transaction Document being or becoming illegal, void, voidable or unenforceable;
- (4) an amendment, supplement, replacement, increase, decrease, compounding or compromising of the obligations of the Guarantor under this Deed;
- (5) the fact that a Transaction Document may be entered into after the execution of this Deed;
- (6) any part of the Guaranteed Liabilities being or becoming irrecoverable or never having been recoverable;
- (7) any irregularity or deficiency in the execution of this Deed by any Guarantor or any lack or abuse of authority or power of any person in relation to that execution;
- (8) a law staying or suspending a right of the Beneficiary against the Debtor, the Guarantor or another person;
- (9) a person becoming or not becoming a guarantor of the Guaranteed Liabilities or any part of them or any discharge or release of a Security Provider;
- (10) the granting of any time, waiver, indulgence or other concession to the Debtor, the Guarantor or another person, with or without the imposition of any additional obligation;
- (11) a judgment or a right which the Beneficiary may have or exercise against the Debtor, the Guarantor or another person;
- (12) the death or incapacity of the Debtor, the Guarantor or another person or a change in its legal capacity;
- (13) an Insolvency Event occurring in respect of the Debtor, the Guarantor or another person or the receipt by the Beneficiary of a dividend or distribution out of or relating to any Insolvency Event or bankruptcy;
- (14) the Debtor, the Guarantor or another person entering into an arrangement, compromise or composition with creditors, an assignment for the benefit of creditors or any other arrangement with creditors, or the receipt by the Beneficiary of any money under any of those arrangements;
- (15) a partnership or other association of which the Debtor, the Guarantor or another person is a member changing its membership or ceasing to carry on its business;

- (16) the Debtor, the Guarantor or another person entering into agreements or transactions with the Beneficiary or incurring obligations to it;
- (17) the Debtor, the Guarantor or another person opening a new account with the Beneficiary or the operation of that account;
- (18) a transfer, assignment, participation, sub-participation, novation or syndication of, or other dealing with, the benefit of this Deed or another Transaction Document by the Beneficiary;
- (19) a Security from the Debtor, the Guarantor or another person:
 - (a) being granted;
 - (b) not being obtained, registered or perfected;
 - (c) being lost or impaired; or
 - (d) being void, voidable or unenforceable;
- (20) the setting aside or avoidance of a payment by or on behalf of the Debtor, the Guarantor or another person; or
- (21) a negotiable or other instrument remaining in circulation or being outstanding.

5.3 Beneficiary not liable

- (1) The Beneficiary is not liable for any loss or damage suffered by the Guarantor as a result of:
 - (a) a release or other dealing with a Transaction Document, including a right of subrogation being lost or adversely affected;
 - (b) the Beneficiary failing or neglecting to recover, by the non-realisation or negligent realisation of a Security Interest or in any other way, any Guaranteed Liability; or
 - (c) negligence, delay, laches or mistake on the part of the Beneficiary.
- (2) The obligations of the Guarantor under this Deed are not discharged reduced or affected in any other way by any matter referred to in clause 5.3(1).

5.4 Consent or knowledge

Clauses 5.1, 5.2 and 5.3 apply whether or not the Beneficiary, the Debtor, the Guarantor or any other person gives its consent to or has knowledge

of any event or matter described in those clauses, and irrespective of any law to the contrary effect.

5.5 Exercise of Beneficiary's rights

The Beneficiary may, in its absolute discretion:

- (1) determine not to enforce this Deed against the Guarantor; or
- (2) make an arrangement or compromise with the Guarantor as it thinks fit.

5.6 No duty

- (1) The Beneficiary is not:
 - (a) required to first notify, make a demand on or take any action, obtain any judgment or file any claim against the Debtor or any other person; or
 - (b) exhaust any remedies it may have against the Debtor or any other person; or
 - (c) enforce any other Transaction Document,but is entitled to demand and receive payment and satisfaction of the Guaranteed Liabilities from the Guarantor when due under this Deed.
- (2) The Beneficiary was not before the execution of this Deed, and is not at any time after the execution of this Deed, under a duty to:
 - (a) disclose to the Guarantor or any other person any information concerning the Debtor or any Security Provider or their respective affairs or transactions with the Beneficiary; or
 - (b) do or execute any matter, thing or document relating to the Debtor or its affairs or transactions with the Beneficiary.

5.7 No reliance

The Guarantor acknowledges that the Guarantor has not executed this Deed as a result of or in reliance on any representation, statement or information made or given to it by or on behalf of the Beneficiary.

5.8 Ruling off

- (1) If the Beneficiary makes a demand under this Deed or this Deed ceases to be binding as a continuing security for any reason the

Beneficiary may open a fresh account or continue an existing account with the Debtor or do both of those things.

- (2) No money paid into any fresh account referred to in clause 5.8(1) by or on behalf of the Debtor will, as between the Beneficiary and the Guarantor, be appropriated towards or have the effect of reducing the Guaranteed Liabilities at the date of a demand or determination referred to in clause 5.8(1). The Guarantor remains liable in respect of the amount of the Guaranteed Liabilities at the date of that demand or determination despite any subsequent dealings in any existing account.

6. Restriction on rights of Guarantor

6.1 Waiver of rights by Guarantor

The Guarantor waives in favour of the Beneficiary all of its rights against the Beneficiary, the Debtor, any Security Provider or any other person or any property to the extent necessary to give effect to this Deed, and must not exercise those rights.

6.2 No competition

Until the Guaranteed Liabilities have been paid, discharged or performed in full, the Guarantor must not, without the consent of the Beneficiary:

- (1) raise a defence available to the Guarantor, the Debtor, a Security Provider or any other person against the Beneficiary, or exercise any right of set-off or make a counterclaim against the Beneficiary, in reduction of its liability under this Deed or another Transaction Document;
- (2) enforce any right or make any claims against the Debtor, a Security Provider or any other person liable for the Guaranteed Liabilities or their property;
- (3) make any claim that it is entitled, by way of subrogation, indemnity or in any other way, to the benefit of any Security or any money or property held by the Beneficiary for the Guaranteed Liabilities; or
- (4) take, receive or permit to exist any Security Interest over all or any part of the property of the Debtor, a Security Provider or any other person liable for the Guaranteed Liabilities to secure payment of any money for which that person is liable to the Guarantor.

6.3 Proof by Beneficiary

- (1) If an Insolvency Event occurs in respect of a Debtor, a Security Provider or any other person liable for the Guaranteed Liabilities, the Guarantor irrevocably and unconditionally authorises the

Beneficiary to exercise the right of proof of the Guarantor for any money for which that person is liable to the Guarantor, including any money which the Guarantor has paid or may be required to pay under this Deed or any other Transaction Document.

- (2) Subject to paragraph 6.3(4), the Guarantor may prove in competition with the Beneficiary for any distribution, dividend or payment arising from an Insolvency Event occurring in respect of the Debtor, a Security Provider or any other person liable for the Guaranteed Liabilities, provided that the competition does not relate to moneys paid by the Guarantor to the Debtor, a Security Provider or any other person to satisfy its obligations in relation to any Finance Document;
- (3) The Beneficiary is not required to account to the Guarantor for any dividend or distribution or payment received on the exercise of a right of proof under clause 6.3(1) until the Beneficiary has received all of the Guaranteed Liabilities and all of the other money payable under this Deed.
- (4) The Guarantor has not given any person a Security Interest in, and has not agreed with represented or undertaken to any person that it will pay any amount to any person from, any distribution, dividend or payment that it receives on exercising any right to prove in respect of the Debtor, Security Provider or any other person, provided that the Guarantor may use any distribution, dividend or payment that it receives on exercising any right to prove in respect of the Debtor, Security Provider or any other person in the ordinary course of its business.

7. Representations and warranties

7.1 Representations and warranties

The Guarantor represents and warrants to the Beneficiary that the representations and warranties contained in clause 11 of each of the Facility Agreements are true and correct as at the date of this Deed. The Guarantor is deemed to repeat this representation and warranty on each date on which representations and warranties are made, repeated or deemed to be repeated under any Transaction Document by the Debtors while any of the Guaranteed Liabilities remain outstanding.

7.2 Acknowledgment of reliance

The Guarantor acknowledges that the Beneficiary has entered into each Transaction Document in reliance on the representations and warranties in this Deed.

7.3 Additional representations and warranties

The representations and warranties in this Deed are in addition to any other representations and warranties in any other Transaction Document.

8. Payments

8.1 Payments by the Guarantor

All payments by the Guarantor to the Beneficiary under this Deed must be made:

- (1) not later than 11:00am on the due date for payment;
- (2) in Cleared Funds in Dollars; and
- (3) to the account specified by the Beneficiary,

or in any other manner that the Beneficiary notifies to the Guarantor.

8.2 Business Days

If an amount would otherwise be due for payment on a day that is not a Business Day, that amount is due on the following Business Day or, if that Business Day is in another calendar month, on the preceding Business Day.

8.3 Payable on demand

An amount payable under this Deed that is not payable on a specified date is payable on demand by the Beneficiary.

8.4 Payments in gross

Subject to clause 8.5, all money payable by the Guarantor under a Transaction Document must be paid unconditionally and in full without:

- (1) set-off or counterclaim of any kind; or
- (2) deduction or withholding for Tax or any other reason, unless the deduction or withholding is required by applicable law.

8.5 Deductions and withholdings

- (1) If the Guarantor or any other person is required by law to make a deduction or withholding for Tax from a payment under a Transaction Document or the Beneficiary is required to make a payment for Tax on any payment received or receivable by it under a Transaction Document, the Guarantor:

- (a) indemnifies the Beneficiary against any Claim in respect of the Tax; and
 - (b) must immediately pay an additional amount to the Beneficiary so that, after all applicable deductions, withholdings or payments for Tax, the Beneficiary actually receives for its own benefit a net amount equal to the amount which it would have received if no deductions, withholdings or payments had been required.
- (2) If the Guarantor is required by law to make a deduction or withholding for Tax from a payment to the Beneficiary under a Transaction Document, the Guarantor must pay the full amount of the deduction or withholding to the appropriate Government Agency in accordance with applicable law and deliver the original receipts to the Beneficiary.

8.6 Allocation of receipts

- (1) The Beneficiary may allocate payments made by or for the account of the Debtor or the Guarantor towards principal, interest or other money forming part of the Guaranteed Liabilities as it considers appropriate.
- (2) The Beneficiary may apply any amounts received or recovered by it under any Security which secures the Guaranteed Liabilities and other obligations in the manner it determines in its absolute discretion. The Beneficiary may apply those amounts in or towards satisfaction of the Guaranteed Liabilities but is not under any obligations to do so.

9. Expenses, costs and Taxes

9.1 Expenses

- (1) The Guarantor must pay to or reimburse the Beneficiary on demand for:
 - (a) all reasonable costs, expenses and Taxes incurred or payable by the Beneficiary for:
 - (i) the negotiation, preparation, execution, completion, stamping and registration of this Deed;
 - (ii) any attendance, inspections calculation, approval, consent, waiver, variation, release or discharge made or given by the Beneficiary under this Deed;
 - (iii) any amendment of any Transaction Document; and

- (iv) any enquiry by any Government Agency concerning the Debtor, the Guarantor, any Security Provider or any transaction contemplated by or funded under a Transaction Document; and
 - (b) all costs, expenses and Taxes incurred or payable by the Beneficiary for any contemplated or actual enforcement of this Deed or the preservation of its rights, powers and remedies under this Deed.
- (2) The costs, expenses and Taxes of the Beneficiary to be paid or reimbursed by the Guarantor under clause 9.1(1) include:
- (a) costs and expenses of any person engaged by the Beneficiary, and all administration costs, internal and external legal fees and disbursements (together with Taxes on those costs, expenses, fees and disbursements) on a full indemnity basis; and
 - (b) any costs, expenses and Taxes incurred in retaining an independent consultant or other person to evaluate any matter of concern.

9.2 Costs

The Guarantor must bear the cost of doing or refraining from doing any act, matter or thing which it is required to do or refrain from doing under or in connection with a Transaction Document.

9.3 Tax

- (1) The Guarantor must pay all Tax in relation to the execution, delivery, performance, release, discharge, variation, enforcement or attempted enforcement of or otherwise in respect of this Deed.
- (2) The Guarantor indemnifies the Beneficiary against all Claims in respect of any amount payable under clause 9.3(1).

9.4 GST

- (1) The Guarantor must pay to the Beneficiary on demand any GST which is payable as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with this Deed by the Beneficiary, together with any fine, penalty or interest payable because of a default of the Guarantor.
- (2) The amount paid by the Guarantor to the Beneficiary on account of GST must be sufficient to ensure that the economic benefit to the Beneficiary of this Deed remains the same whether GST applies or not.

- (3) The Beneficiary will give the Guarantor a tax invoice complying with any legislation under which GST is imposed.

10. Interest on overdue amounts

10.1 Default Interest

- (1) Subject to clause 10.1(3), the Guarantor must pay interest to the Beneficiary on demand on any amount due and payable by the Guarantor under this Deed but unpaid (including interest payable under this clause 10.1).
- (2) Interest under clause 10.1(1):
- (a) accrues on each unpaid amount from and including the due date for payment to the date of actual payment at the rate determined by the Beneficiary to be the sum of 3% per annum and the higher of:
 - (i) the cost to the Beneficiary of funding the unpaid amount; and
 - (ii) the rate, if any, applicable to the unpaid amount immediately before the due date;calculated with reference to successive periods of a length selected by the Beneficiary or, if no selection is made, of 1 month, starting on the due date for payment;
 - (b) accrues from day to day;
 - (c) is calculated on the basis of the actual number of days elapsed (including the first day but excluding the last) and a 365 day year; and
 - (d) may be compounded by the Beneficiary at intervals selected by the Beneficiary or, if no selection is made, at 1 month intervals.
- (3) The Guarantor has no obligation to pay interest under clause 10.1(1) on any unpaid amount if the Guarantor has another obligation to pay default interest on the same unpaid amount under another Transaction Document and the Guarantor satisfies that other obligation.

10.2 Additional Interest

If a liability under a Transaction Document becomes merged in a judgment, the Guarantor must, as an independent obligation, pay interest on the amount of that liability to the Beneficiary. Interest on the amount of

that liability will accrue from the date the amount becomes due until the date the amount is paid, both before and after judgment, at the rate which is the higher of:

- (1) the rate payable under the judgment; and
- (2) the rate referred to in clause 10.1(2).

11. Indemnities

11.1 General indemnity

- (1) The Guarantor unconditionally and irrevocably indemnifies the Beneficiary against any Claim suffered or incurred or payable by the Beneficiary arising directly or indirectly as a result of:
 - (a) the failure of the Guarantor to comply with any of its obligations in accordance with a Transaction Document; or
 - (b) the exercise or attempted exercise by the Beneficiary of a right or power under this Deed;
- (2) Without limiting clause 11.1(1), the indemnity of the Guarantor includes an indemnity for legal costs and other expenses (and Taxes on those amounts) on a full indemnity basis.

11.2 Survival of indemnities

- (1) The indemnities in this Deed are continuing obligations of the Guarantor, separate and independent from the other obligations of the Guarantor and survive the termination of this Deed or any other Transaction Document.
- (2) It is not necessary for the Beneficiary to incur expense or make payment before enforcing a right of indemnity under this Deed.

12. Assignment

12.1 Assignment by the Guarantor

The Guarantor must not assign or otherwise transfer, create any charge, trust or other interest in or otherwise deal with a Transaction Document or a right, remedy, power, duty or obligation under a Transaction Document without the prior written consent of the Beneficiary.

12.2 Assignment by the Beneficiary

The Beneficiary may assign or otherwise transfer, create a charge, trust or other interest in or otherwise deal with a right, remedy, power, duty or

obligation under a Transaction Document or grant a participation or sub-participation in a Transaction Document in accordance with the Facility Agreement.

12.3 Disclosure

The Beneficiary may disclose to a potential assignee, transferee, participant, sub-participant or any other person who is considering entering into contractual relations with it in connection with or in relation to a Transaction Document any information about the Debtor, the Guarantor, a Security Provider and the Group and the Transaction Documents as the Beneficiary considers appropriate.

12.4 Change in status

- (1) This Deed remains binding on the Guarantor despite:
 - (a) any change in the constitution of the Beneficiary, the Debtor or the Guarantor; or
 - (b) the absorption, amalgamation or merger of the Beneficiary, the Debtor or the Guarantor with or into any other person; or
 - (c) the acquisition of all or any part of the undertaking of the Beneficiary, the Debtor or the Guarantor by any other person.
- (2) This Deed remains valid and effective in all respects in favour of any assignee or successor in title of the Beneficiary in the same manner as if that assignee or successor in title had been named as a party to this Deed instead of the Beneficiary.

13. Set-off

13.1 Set-off

The Beneficiary may, whilst an Event of Default subsists and only after a demand has been made by the Beneficiary under this Deed on the Guarantor, set-off and apply towards satisfaction of the Guaranteed Liabilities:

- (1) any amount held by Timbercorp Limited on its own account; and

(2) any amount that is equal to the amount held by Timbercorp Limited on behalf of Almond Land Pty Ltd or any of the Security Providers provided that:

(a) the amount held by Timbercorp Limited is held on behalf of Almond Land Pty Ltd or any of the Security Providers and not on behalf of the Growers; and

(b) such amounts relate to the Projects.

13.2 Additional right

The right of set-off contained in this clause 13 is in addition to any general or banker's lien, right of set-off, right to combine accounts or other right to which the Beneficiary is entitled.

14. Preservation of rights

14.1 No merger

- (1) No Transaction Document merges, discharges, postpones or adversely affects in any other way the rights, remedies or powers of the Beneficiary under any other Transaction Document.
- (2) Nothing in any other Transaction Document merges, discharges, postpones or adversely affects in any other way a Security or any of the rights, remedies or powers of the Beneficiary against any person.
- (3) If a judgment is made in favour of the Beneficiary against the Debtor, the Guarantor or a Security Provider in respect of the Guaranteed Liabilities or any part of them, the Beneficiary holds the judgment collaterally with the Transaction Documents as security for payment of the Guaranteed Liabilities and no Transaction Document merges in the judgment.

14.2 Moratorium legislation

To the extent permitted by law, a provision of a law is excluded if it does or may, directly or indirectly:

- (1) lessen or vary in any other way the Guarantor's obligations under a Transaction Document; or
- (2) delay, curtail or prevent or adversely affect in any other way the exercise by the Beneficiary or a Controller appointed by the Beneficiary of any of its rights, remedies or powers under a Transaction Document.

14.3 Waiver and exercise of rights

- (1) A waiver by the Beneficiary of a provision of or of a right under a Transaction Document is binding on the Beneficiary only if it is given in writing and is signed by the Beneficiary or an Authorised Officer of the Beneficiary.
- (2) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (3) A single or partial exercise of a right by the Beneficiary does not prevent another exercise or attempted exercise of that right or the exercise of another right.
- (4) Failure by the Beneficiary to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- (5) The Beneficiary is not liable for any loss, cost or expense of the Guarantor caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

14.4 Beneficiary's rights cumulative

The rights, remedies and powers under the Transaction Documents of the Beneficiary, or a Controller appointed by the Beneficiary, are cumulative and do not exclude any other rights, remedies or powers.

14.5 Further assurances

The Guarantor must, at its own expense, whenever requested by the Beneficiary, promptly do or cause to be done anything which the Beneficiary considers necessary or desirable to:

- (1) give full effect to a Transaction Document; or
- (2) more fully secure the rights, remedies and powers of the Beneficiary under a Transaction Document or to enable the Beneficiary to exercise those rights, remedies and powers; or
- (3) perfect or complete any transfer or assignment referred to in clause 12 and the benefit of this Deed in relation to any transfer or assignment,

including signing and delivering documents

14.6 Attorney

- (1) The Guarantor irrevocably appoints the Beneficiary and each of its Authorised Officers severally as its attorney to do any of the following:
 - (a) perform the obligations of the Guarantor under the Transaction Documents;
 - (b) in the name of the Guarantor or the attorney, do everything the attorney considers necessary or desirable to give full effect to a right, remedy or power of the Beneficiary under a Transaction Document (including signing and lodging proofs of debt and similar claims in legal proceedings); and
 - (c) appoint substitutes or delegate its powers (including this power of delegation) to any person for any period and revoke any substitution or delegation.
- (2) An attorney of the Guarantor may exercise its powers even if the exercise of the power constitutes a conflict of interest or duty.
- (3) If required by the Beneficiary, the Guarantor must ratify anything which an attorney or its substitute or delegate does in exercising its powers under clause 14.6(1).

14.7 No marshalling

The Beneficiary is not required before it enforces this Deed or any other Security to:

- (1) give notice of this Deed to any person;
- (2) enforce payment of or appropriate any Guaranteed Liabilities or other money or assets which it at any time holds or is entitled to receive;
- (3) marshal, enforce, realise or otherwise resort to any Security; or
- (4) commence proceedings or enforce any right against the Debtor, the Guarantor or any other person,

unless the Beneficiary thinks fit.

14.8 Time of the essence

Time is of the essence of the performance of each of the Guarantor's obligations to pay money under this Deed.

15. Notices

15.1 Requirements

All notices must be:

- (1) in legible writing and in English;
- (2) addressed to the recipient at the address or facsimile number set out below or to any other address or facsimile number that a party may notify to the other:

to each Guarantor:

Address: Level 8, 461 Bourke Street Melbourne Vic 3000
Attention: Mr Sol Rabinowicz
Facsimile no: (03) 96704271

to the Beneficiary:

Address: Australia and New Zealand Banking Group Limited
Level 10, 530 Collins Street
Melbourne VIC 3000
Attention: Manager, Corporate & Institutional Banking
Facsimile no: (03) 9273 3161

- (3) signed by the party or, where the sender is a company, by an Authorised Officer or under the common seal of the sender; and
- (4) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia) or facsimile.

15.2 Receipt

Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be considered to have been received:

- (1) if sent by hand, when left at the address of the recipient;
- (2) if sent by prepaid post, 3 days (if posted within Australia to an address in Australia) or 7 days (if posted from one country to another) after the date of posting; or
- (3) if sent by facsimile, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole facsimile was sent to the recipient's facsimile number,

but if a notice is served by hand, or is received by the recipient's facsimile, on a day that is not a Business Day, or after 5:00 pm (recipient's local

time) on a Business Day, the notice will be considered to have been received by the recipient at 9:00 am (recipient's local time) on the next Business Day.

16. General provisions

16.1 Invalid or unenforceable provisions

If a provision of a Transaction Document is invalid or unenforceable in a jurisdiction:

- (1) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (2) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

16.2 Consents and approvals

- (1) The Beneficiary may give its approval or consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless a Transaction Document expressly provides otherwise
- (2) If, under a Transaction Document, the Beneficiary must or may form an opinion or hold a considered view, that opinion may be formed or view held in its absolute discretion on its behalf by its board of directors or an Authorised Officer of the Beneficiary.
- (3) The Beneficiary may give reasons in respect of a matter described in clause 16.2(1) or (2) but is not obliged to do so.

16.3 Beneficiary's certificate

A certificate signed by an Authorised Officer of the Beneficiary stating an amount due, owing or payable or a rate or any other matter for the purpose of a Transaction Document is, in the absence of manifest error, conclusive and binding on the Guarantor.

16.4 Certifications

Any document or thing required to be certified by the Guarantor must be certified by an Authorised Officer of the Guarantor or in any other manner that the Beneficiary approves.

16.5 Amendment

This Deed may be amended only by a document signed by all parties.

16.6 Counterparts

This Deed may be signed in counterparts and all counterparts taken together constitute one document.

16.7 Successors and assigns

This Deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns.

17. Governing law and jurisdiction

17.1 Governing law

This Deed is governed by the laws of Victoria.

17.2 Jurisdiction

The Guarantor irrevocably and unconditionally:

- (1) submits to the non-exclusive jurisdiction of the courts of Victoria;
and
- (2) waives, without limitation, any claim or objection based on
absence of jurisdiction or inconvenient forum.

18. Deed of Covenant

The rights of the Lender under this Deed are subject to the terms of a Deed of Covenant dated on or about the date of this Deed, from the Lender to the Growers, Timbercorp Securities Limited and Almond Management Pty Ltd.

Executed as a deed

Signed for and on behalf of
Timbercorp Limited by a duly
appointed attorney in the presence of:

Signature of witness

John Stuart Murray

Name of witness (BLOCK LETTERS)

Signature of attorney (I have no notice
of revocation of the power of attorney
under which I sign this document)

Mark Pym

Name of Attorney (BLOCK LETTERS)